

Legal, Legislative & Regulatory Services

Agency 95 - Activity 9520

**Presented to House Finance Division III
February 25, 2019
Melissa St. Cyr**

Melissa St. Cyr, Chief Legal Officer
603-271-9282
Melissa.st.cyr@dhhs.nh.gov



- ▶ **Overview of Legal & Regulatory Services**
- ▶ **Key Services**
- ▶ **Caseloads**
- ▶ **Key Challenges**



Overview – Legal & Regulatory Services

- ▶ Legal & Regulatory Services ensures that DHHS adheres to and fairly applies the laws and regulations developed to implement legislative policy.

- ▶ The functional areas providing these services are:
 - ▶ Bureau of Licensing & Certification

 - ▶ Legal Bureau

 - ▶ Administrative Appeals Unit

 - ▶ Ombudsman Offices

 - ▶ Legislative Services



Bureau of Licensing & Certification

Child Care Licensing

Conducts on-site inspections and investigations of child care facilities – center based, family based and 24-hour residential based child care, along with licensed-exempt providers receiving child care subsidy. Ensures compliance with applicable NH Statutes and Administrative Rules, approves and issues licenses, and initiates appropriate disciplinary action when necessary for compliance and the protection of children. Oversees summer and recreational camp licensing and inspection process.

Health Facilities Administration

Health Facilities Administration (HFA) is responsible for the oversight and enforcement of basic standards designed to promote safe and appropriate care of persons receiving care and treatment in hospitals and other medical facilities, residential facilities, and non-residential health care providers. HFA includes the Licensing Unit, Certification Unit and Community Residences Certification Unit.



Bureau of Licensing & Certification

Health Facilities Licensing

Licenses and inspects a variety of health facilities, residential facilities and nonresidential health care providers including but not limited to hospitals, walk-in clinics, nursing homes, substance use disorder residential facilities and other residential care facilities. The Health Facility Licensing Unit ensures compliance with applicable NH statutes and administrative rules, approves and issues licenses and initiates administrative action when necessary. HFA also investigates complaints filed against licensed health facilities, residential facilities and non-residential health care providers. The Health Facility Licensing Unit also provides consultation and technical assistance to help understand licensing regulations to new and existing facilities and agencies.

Health Facilities Certification

The Certification Unit is the survey agency for the NH Medicaid Office and the US Centers for Medicare and Medicaid Services (CMS). The Health Facility Certification Unit certifies and inspects health facilities, nursing facilities and non-residential health care providers that participate in the Medicare/Medicaid programs.



Bureau of Licensing & Certification

Community Residences

Certifies and inspects community residences that care for individuals with a developmental disability, acquired brain disorder, or a behavioral health diagnosis. Certified community residences include certified residences of 1-3 individuals, certified and licensed community residences for 4 or more individuals, certified community participation services through a community based certified day services site, and adult family care homes. Inspects and certifies community residences and Community Participation Services sites in accordance with state statutes and regulations. Inspects and licenses homes for four or more individuals Adult Family Care homes.

Life Safety Code and Health Facilities Construction

Ensures compliance with the NH State Fire Code and the International Building Code, which are codes and standards for sprinkler systems, fire alarms, building code issues, means of egress, and other important fire safety measures. Assists owner/operators, architects, and contractors as to the minimum life safety code requirements before they invest time and money into a licensed health care facility including residential care. Provides ongoing assistance and conduct annual on-site inspections to ensure compliance with applicable NH statutes and administrative rules as well as conduct investigations due to receipt of complaints.



Bureau of Legal Services

General Counsel

Provides legal services across the Department – representing the Department in court and administrative forums on issues such as personnel matters, defending administrative decisions, litigating New Hampshire Hospital commitments, pursuing debt owed to the State, advising on internal and external audits, responding to law suits against the Department, providing legal advice and general counsel on matters concerning the administration of Department programs including the development and implementation of policies, interpreting state laws and rules, investigating and advising on personnel concerns, responding to right to know requests, advising for the contract and procurement processes, ensuring and advising on HIPPA compliance, and promulgating administrative rules.

DCYF Counsel

Under the supervision of the Department of Justice, DCYF counsel represents the Department to protect the safety and well-being of children in DCYF's care. DCYF attorneys represent the Department in litigating abuse and neglect cases filed by the agency to protect children.



Legal Bureau

Child Support Counsel

Provides legal services to the Bureau of Child Support Services – representing the Bureau in state courts for the establishment paternity and the establishment and enforcement of child support and medical support orders, including interstate establishment and enforcement of child support orders, responding to law suits against the Bureau, providing legal advice and general counsel on matters concerning the administration of the Child Support Program.

Legislative Services

Coordinates and supports all legislative matters involving the Department. Serves as a resource to the Legislature by providing testimony and information on important matters concerning the Department and the citizens it serves.



Administrative Appeals Unit

Administrative Appeals Unit

Adjudicative process to provide a fair hearing for applicants and recipients of DHHS services through an objective, impartial review of final actions in a program administered by the Department. Identify significant legal issues that come to light in the hearings process and communicate with Department program administrators.

The AAU holds hearings on literally dozens of different types of cases. The jurisdiction is so broad because the Department touches almost every aspect of client's lives. The most common types of hearing are long term care, child abuse and neglect cases, Aid to the Permanently Totally Disabled (APTD), Developmental Disability eligibility, Food Stamps, Home Care for Children with Severe Disabilities (HC-CSD), New Hampshire Hospital cases, medical assistance cases, and prior authorization cases (for durable medical equipment, prescriptions, and medical and dental treatment). The AAU receives appeal requests from anyone from clients to residents of institutions, to MCOs to physicians who are aggrieved by a decision of the Department.



Ombudsman Offices

Ombudsman

Provide assistance to clients and employees of the Department by investigating and resolving complaints regarding any matter within the jurisdiction of the Department, including services and assistance provided by the Department or its contractors, using mediation or other means of informal dispute resolution. Tracks patterns of concerns and complaints across the Department to analyze systems issues.

Office of Long Term Care Ombudsman

Investigate complaints from any source concerning residents of the state's nursing homes and assisted living facilities regarding quality of care, life or violations of resident's rights; and to represent the interests of long term care residents regarding proposed legislation, regulations and policies. Provide consultation and education services to long term care facilities, their residents, and interested parties. Make recommendations concerning changes to the delivery of services, and make referrals to other agencies.



Bureau of Licensing & Certification

Child Care Licensing:

Inspection of 801 licensed & 22 license exempt facilities serving over 46,000 childcare license slots statewide. Inspection of 99 licensed youth recreation programs for a total capacity of 63,760. Responded to approx. 240 complaints/year.

Health Facilities Administration (including Community Residences):

Inspection/certification of 1,261 facilities. Intake of approx. 3,000 concerns/complaints. 1,268 certified homes and 53 licensed/certified homes (2,421 certified beds); 62 certified day programs; and 2 adult family care homes.

Legal Bureau

General Counsel: Right to Know Requests 200+/year; Estate Recoveries approx. \$6 million year; Client & Legal Services 300 complaints; Human Resources approx. 35 cases; AAU Appeals approx. 150; 31 rule promulgations, 240 probate commitments and 80 guardianships.

DCYF: Currently 865 open child protection court cases.

Child Support: Average of 315 hearings per month.

HIPPA: Investigation of approx. 66 incidents per year.

Administrative Appeals Unit

Process approx. 1,000 cases per year.

Ombudsman

Intake of over 1,274 cases per year.

Office of Long Term Care Ombudsman

320 cases involving 531 complaint codes; 669 facility & 1302 individual consultations.



Active Litigation

- Approximately 25 open and active litigations of significance.
 - 1 Board of Claims matter – damages claimed approximately \$3,000.
 - 1 Contract/Economic Tort matter.
 - 7 Employment-related actions – some pending the HRC.
 - 9 Personal Injury Actions
 - 8 involving DCYF
 - 1 involving YDC
 - 7 systems cases which impact or seek to have an effect on one or more systems or programs under DHHS's control. Court ordered alterations to those systems or programs could be costly.
 - Verrill v. Shibinette – Regarding whether certain benefits are available to individuals in particular circumstances under RSA 171-A:1-a.
 - Azar v. Philbrick - Granite Advantage program waiver under the Medicaid Act, pending before the U.S. Supreme Court, argued at the end of March 2021.
 - 2 actions concerning how the Involuntary Emergency Admission statutes under RSA chapter 135-C operate.
 - Doe v. Shibinette, et al. – Federal District Court
 - Jane Doe v. Shibinette – NH Supreme Court
 - G.K. v. Sununu – regarding the state foster care system.
 - Price v. Shibinette – NH CFI Program
 - Carrigan v. DHHS – General DCYF concerns
- Settlements
 - Employment – 2019 to Present – Total \$172,000
 - Personal Injury – 2019 to Present – Total \$1,792,500



Major Challenges

1. COVID - A large amount of staff turnover occurred over the last year, with many retirements. With the hiring freeze, our legal unit remained very short. Our certified health facilities team had 7 qualified inspectors retire or resign. As it takes 6-9 months to complete CMS training, this left very few individuals trained to conduct inspections. In addition, the volume of work has increased dramatically for all units, but specifically for the Legal Bureau and the Bureau of Licensing and Certification. Both of these units do not have the manpower to meet the demands of the job. This has led to significant stress among our current staff.
2. AAU – current challenge is equipment. Our videoconferencing system needs upgrading and there is no budget for the equipment. As hearings must occur electronically, either due to COVID or client needs, we must upgrade the system to accommodate our clients accordingly.
3. LEGAL – Litigation costs and personnel resources for discovery and litigation hold around litigation creates a huge burden on the legal unit and costs the Department a considerable amount of time and money.



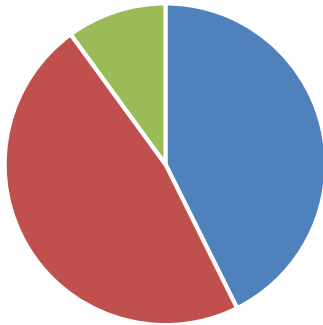
Staffing – Legal and Regulatory Services

| Governor Recommended Positions SFY22 | % | |
|--|-----|---|
| | | 9520 - Office of Program Support Accounting Unit |
| 93 | 55% | Legal Services |
| 76 | 45% | Regulatory Services |



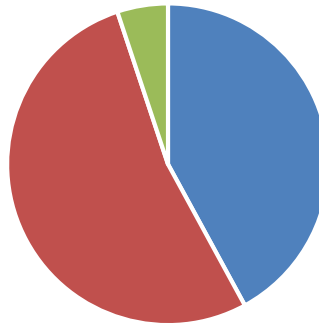
Budget Chart comparison – Legal Services

2018 / 2019



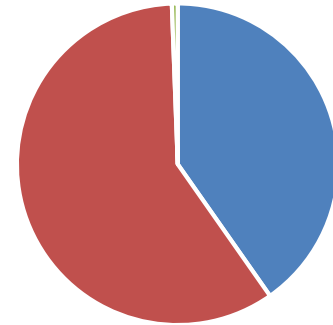
■ Federal Funds ■ General Funds
■ Other

2020 / 2021



■ Federal Funds ■ General Funds
■ Other

2022 / 2023

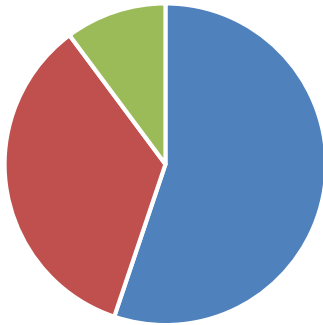


■ Federal Funds ■ General Funds
■ Other



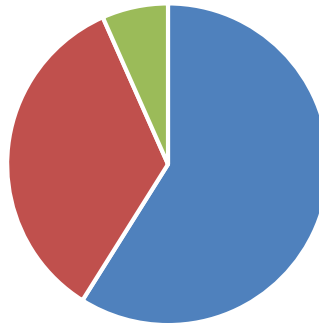
Budget Chart comparison – Regulatory Services

2018 / 2019



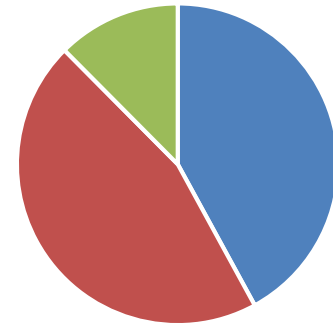
■ Federal Funds ■ General Funds
■ Other

2020 / 2021



■ Federal Funds ■ General Funds
■ Other

2022 / 2023



■ Federal Funds ■ General Funds
■ Other



Regulatory Services

- ▶ Ensure that children are in safe and healthy environments and are provided with care, supervision, and developmentally appropriate activities that meet each individual’s physical and emotional needs, whether the individual is in a licensed NH child care programs or cared for by licensed-exempt providers receiving Child Care Development Funds.
- ▶ Ensure all individuals, including vulnerable adults, cared for in all health facilities and community residences are inspected for clinical and life safety compliance, and to investigate complaints reported against any of the facilities, minimizing risks to clients served in New Hampshire.
- ▶ Provide an opportunity for a fair hearing to give applicants and recipients of DHHS services an impartial, objective review of final actions taken in a program administered by the Department.
- ▶ Receive and resolve complaints made against the Department as well as the long term care facilities in the State.

| Activity-Accounting Unit | Accounting Unit Title | Division | Bureau | Budget Book Page # | Budget Briefing Book Page # |
|--------------------------|--|----------|--------|--------------------|-----------------------------|
| 9520-5143 | Child Care Licensing | LLRS | RS | 1170 | 240 |
| 9520-5146 | Health Facilities Admin | LLRS | RS | 1171 | 242 |
| 9520-5682 | Community Residences | LLRS | RS | 1173 | -- |
| 9520-5683 | Operations support (Admin Appeals Unit) | LLRS | RS | 1173 | 246 |
| 9520-5696 | Ombudsman | LLRS | RS | 1175 | -- |
| 9520-6636 | Long Term Care Ombudsman | LLRS | RS | 1176 | -- |



Legal Services

- ▶ Provide legal support and services to the Department, and its program areas to ensure that DHHS' delivery of services adheres to and fairly applies the laws and regulations developed to implement legislative policy.

| Activity-Accounting Unit | Accounting Unit Title | Division | Bureau | Budget Book Page # | Budget Briefing Book Page # |
|--------------------------|-----------------------|----------|--------|--------------------|-----------------------------|
| 9520-5680 | Legal Services | LLRS | LS | 1172 | 244 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

